

In the Matter of Merchant Mariner's Document No. Z-303858 and all other Seaman Documents
Issued to: FITZ DARLINGTON PAYNE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1210

FITZ DARLINGTON PAYNE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 21 January 1960, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as a fireman-watertender on board the United States SS SAN JOSE under authority of the document above described, on or about 18 September 1959, Appellant wrongfully failed to obey a lawful order of the Chief Engineer and a lawful order of the Master.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence a logbook entry and the testimony of the Master, Chief Engineer, and First Assistant Engineer.

In defense, Appellant offered in evidence his testimony and that of the Junior Engineer who was on watch Appellant when this difficulty started. Appellant denied that he was given an order by either the Master or the Chief Engineer.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. The Examiner then an order suspending all documents, issued to Appellant, for a period of three months outright plus six months on eighteen months' probation.

FINDINGS OF FACT

On 18 September 1959, Appellant was serving as a fireman-watertender on board the United States SS SAN JOSE and acting under authority of his document while the ship was at sea.

On this date, Appellant was standing the 0800 to 1200 watch in the fireroom with the door closed between the fireroom and the engine room. The Junior Engineer was also on watch in the fireroom when the First Assistant Engineer asked Appellant to keep this door open. Appellant replied

that he would not do so. The First Assistant informed the Chief Engineer about this. The latter went below, opened the door, fastened it to a hook to keep it open, and ordered Appellant to leave the door open. (The reason for this was so that the engineering officer on watch could hear the low-water alarm if it sounded in the fireroom.) Appellant closed the door because, he said, it was too hot in the fireroom with the door open.

The Chief Engineer reported to the Master and he sent for the Appellant. The Master issued an order to Appellant that he was to leave this door open. When Appellant replied that he would not obey the Master's order, Appellant was demoted and was not on duty in the fireroom for the balance of the voyage.

Appellant's prior record includes three offenses of disobedience of lawful orders and two offenses of failure to perform duties.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that these two alleged orders were not lawful. The conduct of the Chief Engineer and First Assistant was based on personal animosity toward Appellant. It was too hot in the fireroom for Appellant's health and safety when the door was open. Therefore, it was not wrongful for him not to obey.

With respect to the alleged order by the Master, Appellant could not disobey because he did not return to duty in the fireroom or engine room.

It is requested that the decision of the Examiner be reversed and Appellant's document reinstated.

APPEARANCE: Tabak and Tabak of New York City by T. Lawrence Tabak, Esquire, of Counsel.

OPINION

Since the Examiner rejected Appellant's denials that he was given orders by the Chief Engineer and the Master, the remaining testimony includes substantial evidence that the orders in question were issued as such rather than merely as requests to keep the door open.

The testimony of the Chief Engineer and the Junior Engineer clearly establish that Appellant closed the door after the Chief Engineer had fastened it open and ordered Appellant to leave it open. The Junior Engineer was standing watch in the fireroom at this time.

Concerning the Master's order to Appellant to leave the door open, the conclusion that the specification was proved is set aside. After Appellant said that he would not obey the order, the Master changed Appellant's duties thereby preventing him from disobeying the order. Hence, there is no evidence that Appellant's intention not to obey the Master was ever carried out. In the absence

of such evidence, this specification must be dismissed.

The remaining question on the merits of the case is whether the Chief Engineer's order was a lawful one. Conflicting testimony as to the usual practice on this and other ships is irrelevant to the issue. The factor of personal animosity alone would not deprive an otherwise lawful order of its lawful character. The contention that the excess heat, when the door was open, was injurious to Appellant was refuted by overwhelming evidence. Appellant's bare statement that it was "too hot" is supported only by the meager evidence that it was a few degrees hotter in the fireroom when the door was open. On the other hand, there is considerable evidence to show that the door was open while other seamen were on watch in the fireroom but that none of them complained about the door remaining open.

The only logical conclusion is that this was a lawful order which Appellant disobeyed in defiance of the Chief Engineer's authority rather than because of any possible danger to Appellant's health if he obeyed the order. Due to the nature of this offense and Appellant's prior record of similar offenses, it is my opinion that the order imposed by the Examiner is warranted despite the dismissal of the other specification.

ORDER

The order of the Examiner dated at New York, New York, on 21 January 1960, is AFFIRMED.

A. C. Richmond
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 1st day of December 1960.